

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

**COMMENTS OF
THE COMMUNICATIONS DIVISION, DESIGNATED
CABLE FRANCHISE AGENCY in the CITY OF ST LOUIS, MISSOURI**

SUMMARY

These comments provide the Commission with factual evidence of the history and success of video franchising in St. Louis for the past 22 years, a success which has benefited numerous stakeholders.... City, various Cable Operators, non-profits, PEG trainees/ volunteers, local video industry, emergency managers, citizens, students, school board, IBEW , colleges, the homebound, immigrant populations (such as our Hispanic and Bosnian residents), the legislative process (shown to all on TV) by providing training, jobs, education and entertainment. **Statements of fact (bold typeface)** are backed up with specific details supporting the assertion.

Exclusive franchises of any kind are specifically forbidden in St. Louis under our 1919 city charter, and probably before, based on the evidence in 1890s ordinances.

The City's desire for competition was thwarted by the refusal of our two selected franchise awardees to accept city-wide franchises in 1984. Both refused to sign agreements unless the City was split into two separate franchise areas, an ultimatum to which the City acquiesced very reluctantly, and only because citizens were clamoring for the cable TV. One viable overbuilder approached this metro market in 2000 but eventually decided not to enter for capital expenditure reasons, not franchising issues. WOW's decision not to build here and instead spend its available capital on existing Ameritech systems with existing revenue streams was a business decision having to do with capital markets , not legal requirements. No telecommunications applicant has made an effort to obtain a cable TV or Open Video System franchise here.

. The City found it necessary to impose customer service standards within a few years of issuing our 1984 franchises. We later found that local requirements without local penalties are

not always honored, leading to the addition of fines and liquidated damages in our 2002 renewal franchise.

Three charts paint quick pictures : the reduction in the number of cable operators in this market since the early 80's; the PEG in both original and renewal franchises; and the history of cable complaints from 1993 to 2005 demonstrate the volume and kinds of problems which require prompt response and intervention on a daily basis at the local level.

We provide evidence of PEG as an economic development tool, the benefits of the I-Net to public safety, and use of emergency alerts over-rides and Government Channels, for example when major floods on two rivers inundated this area 1992-93, requiring immediate evacuations of entire neighborhoods while attempting to keep the citizenry informed and calm.

Local franchising is a leasing process involving free negotiation of a rental contract between a landlord and a tenant for the use of public property for private profit. Whether original, transfer or renewal (the Franchise Agency has done all three) it involves an element of risk on both parts, and requires fairness on both sides

Based on these facts, we believe the Commission can draw some logical conclusions:

1. . Franchising is not a philosophy or public policy requiring standards for multi-channel video tenants different from others using public property for commercial enterprises: a restaurant on the waterfront, or hamburger stand in a public park. *The City is obligated by its legal fiduciary responsibility to obtain fair compensation, managing highest and best use of property it holds in trust for taxpayers, no different from the Commission's management of spectrum*
2. Current franchising provides certainty for all parties over long periods (15 years here), creating a stability which fosters innovation, while providing level playing fields (through

general regulatory codes imposed equally on all) so that the business plan, rather than regulation, picks winners and losers.

3. Franchising should not be accused of being a barrier to entry by those who have not even attempted the process.

4. The distinctly local nature of a community's government, cable-related needs, demographics and population, geography, characteristics, problems and issues is not pre-empted in importance by the desires of corporate entities for concessions and subsidies to business plans which appear to intentionally ignore regulatory realities. There is no need to pre-empt local regulations to foster competition among similar providers of similar services.

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The Franchise Agency

These Comments are filed by the Regulatory Manager of the Communications Division of the City of St. Louis (“Franchise Agency”) to provide factual evidence requested by the Federal Communications Commission (“Commission”). We support the comments filed by the National Association of Telecommunications Officers & Advisors ("NATOA") and our fellow franchising communities in Missouri and around the country.

The Communications Division holds delegated authorities and duties from the twenty-eight (28) member Board of Aldermen (“Franchise Authority”) in all aspects of cable franchise administration and compliance. It has served in that capacity since 1983, overseeing 2 original franchise grants, 3 transfers of ownership/control and a complex 2001 renewal. The Franchise Agency personnel’s institutional memory far outstrips that of the various Cable Operators in the St. Louis area, and in many respects that of the current Federal Communications Commissioners and staff with regards to the issues regarding cable television *in St. Louis*. Therefore, the

Franchise Agency is in a position to demonstrate (as NATOA asserts) that Local Governments can – *when given the opportunity* - issue appropriate local franchises for old and new entrants in the video field and have do so on a timely basis since 1983.

In support of this assertion, the Franchise Agency appreciates this opportunity to inform the Commission on the record about specific and concrete facts regarding the history of video franchising in our city.

Background Profile - City of St. Louis

The City of St. Louis, a chartered city, was founded in 1764 by French explorers Auguste Laclede and Pierre Chouteau as a key trading post on the Mississippi River.

The 63 square mile City itself has a current population of approximately 348,000+ residents, occupying 154,900 dwelling units in a mostly inner-core urban environment typical of older Midwest communities. It is surrounded by (but not a part of) St. Louis County and a number of other municipalities, contributing to a total bi-state metropolitan area population in excess of 2 million.

After a 20 plus year history of original cable franchise grants, sales, acquisitions and transfers (most recently from TCI/AT&T Broadband) Charter Communications is now sole “incumbent” provider in the City of St. Louis and throughout the metropolitan area, on both the Missouri and Illinois sides of the river.

How St. Louis Franchising Works

Our most recent charter, adopted in 1919, contains specific requirements and authorizations for the granting of any kind of franchises. Furthermore, ordinances dating to the 1890’s make clear that multiple utility used our streets without exclusivity of any kind. Most importantly, we wish the Commission to take special note of the following:

FACT: St. Louis' 1919 City Charter forbade exclusive franchises of any kind, some 65 years prior to the adoption of the 1984 Cable Act.

In the City of St. Louis, the original 1984 cable "franchise" was governed by two documents: a 1982 Enabling Ordinance setting broad terms and conditions for application and grant, and the actual April 1984 Franchise Agreements themselves, detailing all terms and conditions of the contract.

Like many other communities at renewal, in 2002 St. Louis adopted two cable-related ordinances applicable to all providers:

- Cable Regulatory Code; and
- Customer Services Standards Ordinance.

These operate in conjunction with any subsequent new or renewal franchise agreements or associated settlement agreements (also all approved by ordinance). The terms of these two ordinances, along with an operator-specific Settlement Agreement and Renewal Franchise Agreement were negotiated in 2001 with the then-incumbent Cable Operator TCI/AT&T Broadband. These documents collectively are referred to as the "renewal franchise" in our discussions below.

Original Franchises 1980 - 1988

.The earliest original cable franchise – a relatively simple one – was granted to a company called Melhar Communications. However, Melhar never began construction, possibly intending to "sit" on the valuable franchise and "sell" it later to another entity. The Board of Aldermen wisely revoked that franchise and decided to start all over again.

Like our fellow communities, the City of St. Louis was approached by many potential cable providers during the “franchising awards” of the early 1980’s. The Board of Alderman’s “Cable Enabling Ordinance 58432” allowed the City to move forward with a set of procedures and criteria identical for any and all applicants. This Franchise Agency played a strong role in evaluating detailed formal proposals and applications from cable companies, as well as staffing public hearings in which both applicants and community stakeholders presented views, needs, promises, problems, and voluntary offerings for service, PEG Access, and other community needs. Given the Melhar experience, the City also prudently funded a formal independent financial assessment as to the ability of the three strongest contenders to actually build and operate a cable system.

On that basis (and due to other questionable events not relevant to this discussion) one applicant was eliminated from further consideration as not viable. City-wide fifteen (15) year Franchises were offered to the remaining two applicants, which both appeared to have the technical, legal and financial wherewithal to actually bring cable TV to the eager residents of the City.

And therein lay a problem. The City intended to grant head-to-head competitive franchises in which both providers would install the 650 +/- linear miles of cable plant city-wide, which would allow residents to have both cable TV and a choice of comparable providers.

FACT: It was the two applicant Cable Operators, *not* the City, which insisted that they be awarded separate franchise areas or they would refuse to sign franchise agreements at all.

In an effort to bring at least cable TV (if not choice) to residents, the Board of Aldermen reluctantly divided the City into two franchise areas granted to STL Cablevision (partially owned by Tele-Communications Inc (“TCI”)) on the south side of the City, and St Louis City Communications Inc (SLCC) Partners (a minority-owned company) on the north side. Terms and conditions of each April 1984 franchise essentially the same:

- Five (5) year deadline for 90% build out in each respective service area;
- PEG channel capacity;
- Funding for Public Access and Local Origination equipment and operations;
- Adoption of the FCC technical standards and periodic testing for compliance;
- Subscriber complaint, dispute resolution and adjudication processes;
- Bonds, insurance and indemnification for plant construction on public property;
- Renewal criteria and process;
- Rate regulation rules which allowed both Operators to select their initial rate, specifically allowing them to recoup a fair return on investment given the complexities of aerial construction and deployment in alleys on telephone poles owned by others. The initial *operator-selected* rate was \$9.00 (some \$2.50 to \$3.00 higher than charges in the surrounding areas of St. Louis County, which had had cable for the past two years.);
- Maximum seven (7) day wait for home installations in areas with activated cable plant (to avoid opportunity for collecting deposits for installations that then took months to complete); and,
- Interconnection with each other and surrounding systems to allow for area-wide reception of regional educational programming on the Higher Education Channel.;
- Participation by minority and women business enterprises in professional contracts and purchases.

However, as with many early franchises, the City did not anticipate inferior construction techniques, poor performance, inadequate service or the need for fines and other penalties for franchise violations.

Plant construction and subscriber drops varied in quality, depending on the Operator, the contractor used, and the physical location. Wires and strand were often strung below the fifteen (15) foot clearance mark. Several City subscribers experienced fried TV set(s), and (more than once) lost a refrigerator full of food. At one point about six (6) years into the franchise, Agency Field Inspectors identified 946 literally dangerous violations of applicable electrical codes

(improper grounding) and ordered corrections. TCI simply refused to resolve the grounding problems for over 6 months until the Agency held a face-to-face meeting with the 5 inch high stack of inspections forms , putting senior management on notice that the City could and would hire a third party to make the corrections and pay for it out of the Operator's performance bond.

**FACT: *Local* enforcement tools, field inspectors and
bonds/insurance and indemnification have been essential to successful
protection of public safety in St. Louis.**

Transfer of Ownership 1988-89

In May/June 1988, incumbent Cable Operators STL and SLCC both approached the City with a request to approve Tele-Communications Inc's simultaneous buy-out of both Cable Operators.

Due to existing problems with substandard picture quality, billing disputes, frequent outages (for which subscribers were not receiving bill credits), busy telephones, and other consumer issues, the City took the opportunity to negotiate for additional and necessary performance standards to be included in Transfer Ordinance 61093 (some five (5) years before the Commission issued minimum service standards).

Negotiators on both sides were tough but cordial. At one point a TCI senior executive involved in the negotiations admitted to this writer that what the City was asking for was actually reasonable from a service viewpoint, but felt that her company had to play several weeks of "markets of Marrakesh" style bargaining before agreeing. Agency staff and City Counselor worked incredibly late (unpaid overtime) hours and weekends to discuss, edit, and prepare the transfer documents. The entire process for this complex double transfer and financial buy-out was completed in less than six (6) months with a small team of people on each side. This period

included all the legal work, six (6) different negotiated versions of the final transfer document TCI wished to sign, as well as the requisite introduction of the ordinance at the Board of Aldermen, referral to committee, public hearings, and approvals. (Any City ordinance requires about forty-five (45) days from start to finish.) The Transfer of the franchises to TCI became effective January 3, 1989.

Because the 1989 Transfer adhered to the basic terms and conditions of the original franchise, the City was not able to implement fines or penalties despite the transfer negotiations.

Four (4) or five (5) months later in 1989, TCI requested the City grant a modification of the franchises allowing TCI to combine the two separate stand-alone systems into one city-wide system with a single head end. This concerned the Agency because some cable plant cascades were already (before consolidation) 26 amps long, with obviously degraded picture quality in several areas of the City. The Franchise Agency completed a comprehensive independent FCC signal strength/picture quality technical inspection (which was paid for by the City and which TCI failed the first time) in order to address these technical issues. TCI's filings of technical consolidation plans and timelines, written assurances that amplifier cascade problems would be corrected, and verification that all residents would receive identical channel line-ups as a result, this Franchise Agency *granted the modification administratively in a matter of weeks*. It later completed the extra step of a second technical inspection (again at the Franchise Agency's expense) to ensure that the plant was indeed operating to FCC technical standards after the head end consolidation.

FACT: as evident here and later on, it has been the Franchise Agency's experience that when a provider wants a deal done quickly, the deal will be done quickly, and when the provider has obvious or hidden reasons for

dragging out negotiations, the Agreement will not be consummated on a City timetable.

AT&T Broadband Purchase of TCI

The City was equally responsive after the announcement of the purchase of TCI by AT&T Broadband. The Franchise Agency and City Counselor reviewed the St. Louis franchise language regarding transfers of ownership and changes of control. Despite its potential ability to do otherwise, the City mutually and pragmatically agreed with TCI that the City would not require a full-fledged transfer process from TCI to AT&T Broadband because the parties were in the renewal window anyway. This example is another instance in which a “one size shoe fits all” federal approach would not have worked as well for the citizens of St. Louis, Franchise Authority, cable operator, or stakeholders of this franchise.

TCI / AT&T Broadband Approach to Renewal

Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a six (6) month window (between the thirtieth (30th) month and the thirty-sixth (36th) month) before the expiration of the franchise in which to formally request renewal under the Federal Act (assuming the Cable Operator wishes to preserve its rights under the formal renewal process). The Franchise Agency received the notice letter in October 1996, and duly initiated its ‘Administrative Proceeding’ under the Act to preserve the Franchise Agency’s rights under formal renewal. The Franchise Agency asked TCI for a timetable in which to discuss past performance, future community needs, operator proposals and other negotiating points. TCI Government Relations Managers met with the Agency only twice over the next two years or more, stalled when asked for specific proposals or timetables, and generally failed to respond to

any type of informal negotiation or discussion. *Three* fruitless years later, the Franchise Agency and the Board of Aldermen made clear that it would wait no longer and was holding a public hearing and issuing formal documents: a Past Performance Review and a Community Needs Assessment as is our right under the formal process.

Only at that point were TCI/AT&T Broadband managers suddenly anxious to talk, asking that the informal process it had ignored for over 24 months be re-instated. After years of silence, AT&T Broadband was suddenly eager to talk ‘outside’ the formal documents. The City declined to do so, extended the existing franchise and indicated it would participate in formal discussions based on the stated community needs, and drafts of a Cable Regulatory Code and Customer Service Standards ordinances.

**FACT: Negotiations go only as fast as the slowest party will let them go.
More often than not it is the operator who prefers “slow.”**

Why? In the Franchise Agency’s experience it was because newer and renewal franchises generally contain deadlines for upgrade requirements and fines for failure to timely perform. In the case of TCI/AT&T Broadband, hindsight tells us TCI/ AT&T Broadband was stalling for time before a new franchise kicked in, because it was in the market to sell all its systems in the St. Louis Metro Area .

FACT: Cable Operators unfortunately do not always negotiate in the open manner that is required of elected officials, as well as required by the ethics policies which municipal professional staff must sign as public employees.

TCI / AT&T Broadband’s negotiating team dragged out renewal discussions in excruciating and repetitive semi-weekly conference calls, fighting over every word in every list,

every principle, and every cable ordinance draft from mid 1999 until mid-February 2001. In several cases, they insisted on-revisiting document drafts which were previously agreed to and done. They asked for - and were granted - two extensions of the original franchise to accommodate these delays. When teased about how long this was taking, they protested loudly that they were just being thorough because 15 years was a long time.

The week that the four (4) finalized negotiated ordinances were forwarded to the Board of Alderman for action, TCI / AT&T Broadband delivered a *huge* transfer of ownership document to the City. Charter Communications would soon be the sole operator in the area.

The same TCI/AT&T Broadband managers and consultants were simultaneously working on both this super-secret transfer and several renewals with jurisdictions in the Metro Area. Yet not once was any LFA in the area clued in to the fact that the known entity and party with whom we were all negotiating in good faith was planning to leave town on June 30, 2001. Furthermore, it announced the sale would occur in the Metro Area whether approved or not by the local franchise agencies.

.Because they dragged out discussions long enough, TCI/AT&T never had to actually provide the capital and / or operating commitments it had agreed to. It intentionally left that to its successor, Charter Communications, which took over in July 1, 2001 following the fast track approval of transfers required under federal law.

It is important for the Commission to understand that local government procurement processes are intentionally very paper-trail intensive and very slow, in order to maximize public awareness and accountability. Even with an RFQ instead of an RFP, it can take 2 to 4 months to hire an auditor or technical inspector who could help verify compliance or non-compliance. And that assumes that money has been budgeted for such an unexpected item. That is the reality of

local government contracting, which applies to all categories of outside services, not merely cable-related activities.

FACT: Many local governments, especially small ones, have neither the internal staff nor the financial resources to hire outside consultants, to complete adequate, let alone detailed, reviews within 120 day timetables imposed on LFAs but not necessarily followed by federal agencies.

St. Louis was not alone in finding it nearly impossible to conduct a comprehensive transfer review, and meet/negotiate with entirely new players all within the federally mandated 120 day window. Completing a franchise fee payment or technical system audit was out of the realm of possibility in that time frame.

St. Louis' Current Renewal Franchise

In conjunction with the renewal, the City arrived at a settlement with TCI/ATT to resolve extensive issues regarding past noncompliance. This settlement included among other things payments in support of access capital and operational costs, construction of an institutional network, and support for a telecommunications job training/internship program. At the request of TCI, these provisions were included in a separate Settlement Agreement Ordinance (#65433). The discussion below of the terms of the Cable Operator's renewal includes Settlement items.

PERIOD

Our current renewal franchise effective date is May 23, 2002 with expiration on May 23, 2017. At this time no other provider, new entrant, or over-builder (including an telephone company) has approached the Agency to actually request a franchise or propose a forma negotiation..

FRANCHISE FEE

Five percent (5%) of gross revenues derived from operation of the system for cable services, including franchise fee payments of advertising, home shopping and late fee revenues and the franchise fee itself (in accordance with the 5th Circuit's "Dallas" decision). These four areas compromise thirteen percent (13%) to sixteen percent (16%) alone of the Operator's annual revenue from the cable system in the City of St. Louis. We note this fact for the Commission's benefit because many telecommunications company-drafted proposed laws for telecommunications statewide video franchising specifically attempt to exempt these revenue streams.

FACT: In our experience, Cable Operators have been quite willing to insist existing franchise contract agreements are pre-empted by an FCC ruling when it benefits them, and quite insistent that the contract is the contract when an FCC ruling does not benefit them.

This creates a problem when Commission rulings or orders counteract the provisions of freely agreed to and signed contracts which pre-dated the order.

The franchise agreement required the cable operator to pay a franchise fee to the City of St. Louis in the amount of 5% of all the cable operator's gross revenues. TCI voluntarily proposed and eagerly agreed that cable modem service was a cable service on which it would pay franchise fees. However, that desire changed as soon as the FCC ruled that cable modem service was not "cable." Charter now calculates franchise fee payments exclusive of cable modem revenues.

FACT: In both the original and renewal franchises, it was the Cable Operator who offered PEG capacity / support as an inducement to be granted the franchise.

PEG CHANNELS

Both old 1984 and new 2002 franchises require the Cable Operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels.

In the **original 1983 franchise** proposals, applicants STL Cablevision (in which TCI was a partner and later full owner) and SLCC Partners (later bought by TCI) voluntarily proposed extensive Governmental, Public, Educational and Local Origination operations support. (See chart below.) Statements made by applicant' representatives s in public hearings in 1984 clearly indicated that Operators believed PEG programming added value to both their proposal and potential subscribers, even anticipating that cost would be about +/- 1% of revenues.

Furthermore, the original applicants proposed that Local Origination (over which they exerted editorial control) was a natural pairing with Public Access run by expert staff or third party non-profits with community media experience. The Operator's annual revenues in this system averaged in excess of \$28 Million to \$32 Million over the same period. In a system of 46,000 – 47,000 subscribers.

PEG costs were part of the rates for the Basic Service Tier (BST) prior to the onset of rate regulation in September 1993. They were not separately listed on subscriber bills, nor did the various Cable Franchisees ever propose or request to do so during the life of the franchise.

PEG ACCESS IN ORIGINAL FRANCHISE 1984 - 2002

Government	Public Access Local Origination	K-12 Educational	Higher Education
2 channels	2 channels	1 channel	1 channel
Managed by Franchise Agency	Managed by independent non-profit	Managed by St .Louis Public School Board	Managed by consortium of local universities
No capital grants	\$350,000 in equipment over first 5 years	No capital grants	No capital grants
No operational funding beyond franchise fee	Sliding scale annual support averaging \$250,000 for operations and community video training over life of franchise	No operational funding	No operational funding
Upstream feed to cable head end	Upstream feed to cable head end	Upstream feed to cable head end	Upstream feed to cable head end
No facilities	Provide Main Studio facility and secondary Satellite Studio location if needed	No facilities	No facilities
Upstream feed from City Hall and Fire Headquarters to facilitate live broadcast of public meetings or training sessions			Interconnection with nearly Cable Ops to transmit programming originating outside Opertor's cable system

PEG ACCESS IN RENEWAL FRANCHISE 2002 - 2017

Government	Public Access Community Access	K-12 Educational	Higher Education
2 channels	2 channels	1 channel	1 channel
Managed by Franchise Agency	Managed by independent non-profit	Managed by St .Louis Public School Board	Managed by consortium of local universities
\$425,000 capital grant in equipment for digital conversion divided into 3 payments over first 3 years of franchise	\$ 75,000 capital grant for new equipment divided into 3 payments over first 3 years of franchise	No capital grants	No capital grants
No operational funding beyond franchise fee	\$260,000 annually for operations and community video training over life of franchise,	No operational funding	No operational funding
Upstream feed to cable head end	Upstream feed to cable head end	Upstream feed to cable head end	Upstream feed to cable head end
No facilities	\$20,000 annual stipend for studio facility rental	No facilities	No facilities
Upstream feed from City Hall and Fire Headquarters to facilitate live broadcast of public meetings or training sessions	Modest subsidy of direct relocation costs if Cable Operator moved channel frequency	Modest subsidy of direct relocation costs if Cable Operator moved channel frequency	Interconnection with nearby systems to transmit programming originating outside City of St. Louis cable system

Of course, operational support of PEG in the new franchise is not a requirement under federal law. However, the importance of PEG to our citizens was apparent in the statistically valid third-party telephone survey which the Franchise Agency funded as part of our community needs ascertainment. When, as a result, Cable Operators (including the one in St .Louis) agree to continue support in a renewal franchise for purely local reasons, any federal pre-emption of such agreements interferes with the whole concept of local service businesses addressing local community needs. In essence both the cable operators and the City understood the concept that “local people know what local people need.”

TCI / AT&T Broadband (and Charter in the background during renewal as the undisclosed buyer secretly approving negotiated terms) continued to express value in their exclusive PEG channels when faced with the increasing penetration of satellite dish video.

It is also worth mentioning that the City believed, and the renewal franchise settlement agreement specified, that any increase in PEG costs beyond that already included in the 1993 rate base from the original franchise would be included as an external cost on Form 1240. This reasonable position demonstrates that viable solutions customized for the local community and resident operator can be – and are – achieved to the satisfaction of both sides..

Furthermore, the Operator has not line-itemed PEG-related costs on its billings, although the franchise agreement allows incremental increases to be separately listed.

**FACT: PEG channels have provided a number of benefits to the City
and its citizens.**

For example, the Franchise Agency believes these benefits are important:

- Firemen do not have to leave their stations and go to headquarters in shifts for group training because “American Heat” and other safety technique videos can be shown in the Engine Houses on the franchise-specified free cable outlet. This improved efficiency and maintained high standards of public safety not to mention that full-staffing at all times contributes to the City’s excellent AAA rating for fire insurance purposes.
- Citizens unable to attend Board of Aldermen (City Council) weekly meetings can see it live on Government Access and then in three (3) other time slots over the next seven (7) days. It is one of the most popular programs on Government Access, with many requests for DVD copies of meetings. Citizens benefit from seeing first hand the actions of their local elected officials without having to make the trip to City Hall at 10 AM on Fridays. .
- Dozens and dozens of worthy community groups have been featured on Public, Government and Community Access. In some cases, programs aired on Access channels (the Hope House Women’s Shelter for example) were used to visually explain the group’s activities or mission as part of successful grant applications for funding.
- HEC, the Higher Education Channel cablecasts college credit courses, enabling those who can not physically or schedule-wise commute to a campus, to nevertheless continue their education or their expand skills.

FACT: PEG Access operations are an economic driver in the St .Louis metro area, which enjoys a reputation for a skilled workforce supporting a robust local video industry.

Many members of the Emmy and Telly winning video crews from St. Louis cover local, national, and international sports (including the Olympics) as well as producing broadcast and industrial video. In hundreds of individual examples (and dozens known first-hand to this writer) these videographers got their start in PEG and went on to union membership and lucrative careers as tax-paying citizens bringing outside money to the local economy. Dozens of video houses and private companies with video departments benefit from the training and resume-building provided by the PEG experience.

INSTITUTIONAL NETWORK (I-NET)

The City of St. Louis 2002 renewal franchise contains the following institutional network ("I-Net") requirements in the Settlement Agreement:

- The I-Net shall be constructed in conjunction with the required 750 MHz upgrade of the cable system, and shall not be activated until the surrounding areas are upgraded. The franchise specifies 36 months to upgrade residential portions of the City and 47 months to upgrade downtown areas which are in the process of being redeveloped and revitalized.
- The I-Net is owned by the cable operator, and is merely segmented portions of the upgraded cable system. The Cable Operator provides connectivity and guaranteed throughput with a specified reliability factor of 99.8% over a 12 month period. The City's Information Technology Services (Computer) Department uses the I-net to carry its Wide Area Network computer traffic, and specifies the V-LANs and routing.

- Fourteen (14) major high-volume buildings are connected to each other with fiber: City Hall, Fire Headquarters, Departments of Health, Personnel, Parks, Refuse, Streets, Communications, Old Jail, New Jail, Water Division, and Police SuperStations. 1, 2., and 3.
- Fifty-nine (59) scattered low volume sites – including thirty (30) Fire Stations, ten (10) Community Centers (which serve as offices for neighborhood-based city employees) the Board of Election Commissioners, water pumping stations, public health emergency headquarters, and assorted other facilities - are served with cable modems used to provide connectivity to the City's I-Net.

We use our I-Net linked computers in the following ways:

- Police Department relays critical emergency and criminal data from Headquarters to its 3 Area stations. Police Captains were clamoring for fast reliable connections over cable system fiber following disappointment with slower telecommunications services linking their computers and data bases
- Neighborhood Stabilization Officers working in the field on revitalization or zoning or housing projects can run into a City Community Center, plug in their laptop and be connected to any data base at City Hall, a tool they find invaluable.
- Any City employee with a computer on the network to be able to interact electronically with any other city employee, sharing data bases and documents, markedly improving the efficiency of City Government and accessibility for its citizens.

EMERGENCY ALERT OVERRIDE

Retaining an excellent concept from the 1984 franchise, the 2002 renewal franchise requires the following:

Ordinance 65433 Section Seven. E. Emergency Alert System

1. Grantee shall design and construct the system to provide for an interrupt of all video channels, and an audio override of all audio channels whereby a designee of the City may introduce an audio message on all of the system's channels simultaneously, during emergencies or disasters. An emergency power source to preserve this function shall also be provided by the Grantee at the head end of its system. The emergency alert system shall comply with all applicable federal requirements.

2. The emergency alert system shall provide for activation from the Office of the Mayor, police headquarters, fire headquarters, or the City Emergency Management Agency, via secure coded access. Methods and access codes for activating the emergency alert system shall be filed and kept current with the City Emergency Management Agency director, the Mayor, the Chief of Police, and the Chief of the Fire Department, and also for informational purposes with the Franchise Agency.

This override to disseminate emergency information was a critically important element during the severe 1992 and/or 1993 Mississippi River floods which required evacuation of entire neighborhoods within the City, or during a hazardous spill from a vehicle in downtown St. Louis.

FACT: Early in the franchise, the Agency developed a monthly override test procedure used City Emergency Management Agency, in conjunction with “first Monday” tests of the tornado siren warning system. The override has never been abused, and the Franchise Agency cannot recall any of the various Cable Franchisees complaining about any hardship related to these provisions.

CUSTOMER SERVICE STANDARDS

As previously referenced, the City negotiated some minimal standards during the 1989 transfer of ownership to TCI, as spelled out in Ordinance # 61093:

Telephone All Lines Busy	less than 25% of the time
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Telephone Abandonment rate	less than 20% of the time
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Telephone Hold Time	no more than 3.0 minutes
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Refunds and Credits	issue within 30 days
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(imposed because it used to take 6 to 12 weeks)

Issue credits for lost service / outages over 24 hours

No disconnection for non-payment until 45 days after original due date

(imposed to stop abuses from delayed posting of payments and reconnection fees.)

After issuing proper notice to the Cable Operator, St. Louis also adopted and enforced the FCC's Customer Service Standards, when those were issued about five (5) years later.

The City was not able to implement fines, so enforcement was confined to violation notices and comment in the "1999 Review of Past Performance" authored by this Agency.

Past performance was easy to quantify, based on records kept by the Agency. As an example of the volume of complaints that can be generated in a system of 45,000 to 60,000 subscribers, the following numbers may be enlightening:

CABLE COMPLAINTS

Gross Monthly Totals Handled by Communications Division

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
TOTAL	889	1074	1387	1645	2169	2290	1461	1204	1646	1020	1014	719	809

Data Base Complaints Sorted by Type

Installation	92	108	111	156	134	137	27	90	52	13	29	14	19
Service	385	345	391	500	667	825	220	256	589	335	224	105	46
Outages	45	49	122	98	187	81	133	115	68	10	13	6	9
Billing	112	204	352	259	673	476	57	202	117	56	88	76	16
Rudeness	2	7	3	6	19	14	3	10	25	3	3	6	8
Programming Rates	27	60	189	363	119	182	4	53	48	10	24	20	23
Construction, Electric Code Low Wires	226	301	219	263	283	375	246 * half-yr figures	478	747	593	633	492	688

Note: Numbers may not add due to coding of complaints with more than once facet.

As an example of the kinds of massive complaint calls that arise from single incidents which need to be addressed promptly and effectively with both information and resolutions :

97 Jan WGN and Blues Hockey/ Late Fee Credits 62 calls in 3 days
 97 Mar Billing Cycle Changes 47 calls for lost checks/late fees
 98 Jan Unannounced Outages (power supplies) 106 calls
 98 Aug Telephones/ Appointments/ Digital Service
 98 Sept Telephones / Missed Appointments / Delays
 01 Oct Required use of Digital Converters for Movies
 01 Nov Digital Converters and Rate Increases
 01 Dec Long Repair Delays / Missed Appointments

FACT: When Cable Subscribers call the Franchise Agency with a problem – outages, wrong bills, missed appointments, low wires, dangerous construction messes, unsatisfactory answers from a Cable CSR, converters and digital service gone awry – they do not want to wait for someone to ‘look into it.’ They call City Hall because they want corrective action and they expect us to provide it. Which we attempt to do whenever possible, the same day for service call issues and missed appointments, and very promptly for more complicated issues like incorrect billings or lost payments. .

The Agency was able to effectively resolve the type and kind of complaints we take because we are familiar with the local practices, Operators, contractors, statistics, outages, trends, reports, and other minutiae which make it possible to promptly assess the severity and legitimacy of a problem and begin making the phone calls and sending the e-mails to get a resolution started -- **Immediately.**

Customers do not want to take another day off work when an appointment scheduled for 8 to Noon or 1 to 5 is missed. They want the cable guy to get there that day. When a bill is allegedly not right, our Franchise Agency staff do a detailed analysis of each charge and get on the phone to discuss the errors with a Cable Operator representative authorized to make changes. When the City's Trash Truck drivers tell us a cable line is down, or so low in the alley that the Refuse Truck cannot get through, or cannot pick up the dumpster, we make another phone call, or send one of our own City Inspectors to cut down the fallen lie. These are not the type of problems which can be effectively handled from 1000 miles away by someone not familiar with our streets and Charter's operations.

The consumer problems and complaints that many LFAs in the St. Louis Metro Area experienced in the 1990s were so endemic, that a number of communities wished to take action. In an effort to establish consistency in standards which would be both easier on the Operators and stronger for consumers, several communities, including St. Louis, St. Peters and St. Charles County all worked from the same template of standards and protections in developing their ordinances.

The **2002 St. Louis renewal franchise is governed by Customer Service Standards Ordinance # 65430**, which closely follows the FCC standards, but adds a great deal of language. Our 2002 Customer Service Standards Ordinance 65430 ordinance contains specifics about what constitutes normal business hours *in this community*, adequate reports, enforcement measures, privacy, CSR handling of telephone calls and Supervisor response to requests from customers, credits and refunds for missed appointments, and the penalties which actually give teeth to any set of standards.

For example, as ridiculous as it sounds, we had to define what a “subscriber” is. We had heard the clever defense that a refund is not owed, or the Cable Operator is not obligated to fix a problem it caused, or that we cannot count an appointment as ‘missed’ because previous ordinances referred to subscribers without specifying that it includes those who (lawfully) receives, had previously received or has applied to receive cable service. Further, the ordinance ensured that that Cable Operator is obligated to non-subscribers for whom they have created a problem: aerial trespass, or damage to property, inappropriate wiring on a multi-family building which is not owner-occupied.

Our standards are based on the belief that decent customer service and good business practices are one and the same. That while some things appear obvious to us, unfortunate history suggests consumers are better protected when this is in writing. Our standards specify :

- Two (2) customer service locations within the City of St. Louis (a 63 sq mile area in which many poorer and older residents rely on public transportation to get anywhere).
- Qualified technicians present or on call to respond to outages 24 hours a day, 7 days a week, and respond within one hour and correct in the shortest possible time.
- Respond to subscriber/user inquiries and complaints within five (5) days (which means at least contact them).

- Either a single main line or a publicized after hours “Trouble” line must be answered by a trained CSR on a 24 / 7 basis.
- When a subscriber asks to speak to a “supervisor,” supervisor should respond within 2 hours but no later than next business day.
- Maximum 60 second hold time, maximum 3% busy signals and maximum 5% abandonment rate at least 90% of the time as measured quarterly.
- Four (4) hour appointment windows with \$20 credits for missed appointments (service or installation).
- Ninety-five percent (95%) of appointments (measured quarterly) must be timely kept (with adequate records kept to ascertain compliance or non-compliance).
- Specifies steps Operator must take before canceling an appointment for which it claims the subscriber was “not at home”. (Otherwise a magnet for abuse and a cover for otherwise bad statistics.)
- Property damage caused by Cable employee or contractor must be fixed within 30 days (Franchise Agency adjudicates disputes).
- Installation within 7 days of request (assuming no plant problems).
- Respond to service interruptions within 24 hours, and other problems by next business day at least 95% of the time.
- Rules for disconnection for non-payment (which precludes a contractor paid by the job climbing the pole behind your house at 9 am Sunday morning to cut off service without first knocking on your front door – actually occurrences which had happened in the past – and sometimes to the wrong subscriber).
- Cable Operator may not charge for services after the date the subscriber specified for services to be discontinued, regardless of how long it takes the Operator to get around to completing a disconnection or downgrade (another abuse which needed to be stemmed).
- Minimum 18 days between receipt of a bill and due date, with an extra 5 days before late fees are applied to account for Operator delays in processing payments.
- Maximum 35 days for cash refunds (by check) or credits on the account.
- Specifications for Notices to Subscribers.
- Privacy Rules.

- Detailed procedures for due process and opportunity to cure alleged franchise violations.

BUILDOUT AND UPGRADE REQUIREMENTS

Original 1984 Franchise

Ordinance 59197 specified Operator must begin construction with six (6) months of the Franchise Effective Date and complete 90% of the residential areas of the City within three (3) years. (An additional seven (7) years was allowed to phase in any difficult-to-wire, underground plant only low density areas such as downtown.

As built by the original franchisees, it was 450 MHz with amplifier cascades routinely 23 to 26 amps long and some even 31 amps long (plus line extenders) and remained that way for 18 years. On a distressingly regular basis it flunked the FCC's semi-annual proof-of-performance tests at far too many locations.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements, to address the problems of the 1984 system.

Renewal 2002 Franchise

Franchise Agreement Ordinance 65433 mandates system be upgraded to a minimum bandwidth of 750 MHz, with a maximum node size of 1,500 homes and, cascades no longer than 8 amplifiers. The deadline for upgrade completion is forty-seven (47) months downtown and thirty-four) 34 months for all other areas of the City.

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The Franchise Agreement contains a rebuttable presumption that (as a dense inner urban community) all homes within the City are within 125 feet of cable plant, and therefore all homes must be served at no additional construction cost to the subscriber or building owner.

With these requirements for universal availability, every citizen in the City has the same ability to order and receive the same cable services as any other citizen in the City.

LEVEL PLAYING FIELDS

The City's adoption of Ordinance 65431, the Cable TV Regulatory Code, was, in itself, a deliberate effort to create a structure by which any video entrant in subject to consistent terms, conditions and requirements regarding Applications, Bonds and Insurance, PEG Access, Street Occupancy, Public Safety, Transfers, Complaint Resolution, Prohibition on Discriminatory Practices, Construction of Systems, Amendments and Limitations of franchises. Section Thirty-five of the Ordinance also addresses "Open Video Systems" and by specifying mandates in accordance with federal law, Commission rulings and judicial decisions, ensures that neither an OVS operator, nor a cable operator is advantaged or disadvantaged with respect to requirements for use of Public-right-of-way for video services.

BONDS

Our franchise contains the following bonding requirements: Performance Bonds during construction phases are \$1,000,000, an amount deemed reasonable for over 653 miles of cable plant and 154,00 households. However, the franchise allows the bond to be reduced to \$500,000 during non-construction phases. This level of bonding is similar to what the City requires for other occupants of the public-right-of-way, including telecommunications providers and public utilities. Further, the bond must be kept in place for 6 months after expiration or transfer of the

franchise to ensure that any problems discovered within a reasonable amount of time can be corrected.

It has been the Franchise's Agency's experience that such bonds are neither difficult nor expensive to obtain and maintain. In a case recently with a telecommunications provider, we learned that a similar bond cost only \$600 for the year.

INSURANCE

Any occupant of the public-right-of-way in the City of St. Louis is required to carry insurance naming the City as co-insured. This includes permanent occupants such as utilities, as well as non-profit organizations such as Strassenfest Inc running a two-day Oktoberfest on temporarily closed streets downtown. In St. Louis, it is the Comptroller (an elected official) who establishes insurance requirements, and not just for cable matters. The Regulatory Code specifies the following for all cable operators, while limiting the number of increases Comptroller can make over the life of a franchise.

Section Twenty-seven of Cable Regulatory Code Ordinance # 65431 states:

- C. A Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring the City and the Grantee with regard to all damages mentioned in subsection A, above, caused by Grantee or its agents.
- D. Additionally a Grantee shall maintain in full force and effect policies of insurance in forms and minimum amounts hereafter described to-wit:
 - 1. Workmen's Compensation insurance as provided by the laws of the state;
 - 2. \$500,000 for bodily injury or death to any one person; \$1,000,000 for bodily injury or death resulting from any one occurrence;
 - 3. \$1,000,000 for property damage resulting from any one occurrence;
 - 4. \$1,000,000 for all other types of liability.
- E. The insurance requirements herein shall not be construed to limit the liability of a Grantee to the City to the amounts of such insurance.
- F. The insurance policies obtained by a Grantee in compliance with this section shall be issued by a company with a rating of A+ or better by A.M. Best Company and licensed to do business in the State of Missouri, and a current certificate or certificates of insurance shall be filed and maintained with the Franchise Agency during the term of the Franchise. Said policies shall name the City as an additional insured and shall contain a

provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty days in advance of the effective date thereof.

G. All subcontractors used by a Grantee in the City shall be licensed to do business in the City pursuant to applicable law.

H. The amounts of any policy required by this Section Twenty-seven.D may be increased at the initiative of the City's Comptroller, but not more than twice during the term of a Franchise and not more frequently than every five years, as follows: If the Comptroller believes that the amount of insurance provided by any policy required hereunder has become inadequate, the Comptroller shall notify the Grantee of such fact, and of the higher amount the Comptroller believes necessary. If within thirty days after such notice the Grantee and Comptroller have not agreed on an appropriate amount of insurance, each of them shall within seven days designate a professional insurance broker from the St. Louis metropolitan area, and such designated brokers shall within seven days designate a third such broker. Within thirty days after their designation, the panel of brokers shall notify the Comptroller and the Grantee of the insurance which, in their judgment, is appropriate in the circumstances, and Grantee shall procure any increased coverage required. In no event shall the amounts of insurance required by Section Twenty-seven .D be reduced pursuant to this Section Twenty-seven .H.

PERMITS FOR USE AND OCCUPANCY OF PUBLIC RIGHT-OF-WAY

The cable franchise grants the cable operator the right to access to the public rights of way and for the purpose of providing cable television service. Licenses or franchises issued to other kinds of utility users also grant the general right to use public streets. However, neither the franchises nor licenses grant permission to use a *particular street, alley or location, or to dig in any street, alley or public place.*

Apart from these franchises and licenses, the cable provider (or any telecommunications provider or the gas or electric company) is required to request and obtain a permit from the City's Board of Public Service to occupy a particular location and to use particular construction methods. This is not a franchise requirement, but a City Code requirement going back to the 1919 Charter which designated the Board of Public Service to supervise and manage all streets and public places.

For example, a typical permit application might request

“ permission to install aerial strand and plant at a height no less than 15 feet on poles in the alleys between Kingsbury and Pershing from Belt Avenue to Union Boulevard.”

Or it might request:

“permission to trench or bore for the purpose of installing 2 inch conduit beginning at the southeast corner of 9th and Olive, continuing along the east side of 9th to Washington Ave, thence west along the south curb of Washington to an existing manhole at Washington and 13th Street.”

With these occupancy permits in place, it is easy to acquire the actual “excavation” or “blocking” permit from the Street Department, in order to legally block lanes of traffic during construction or dig up the asphalt street surface.

The City, Board of Public Service and Street Department further coordinate and simplify this process by allowing the same bonds and insurance referenced above to apply to permits and construction.

ENFORCEMENT PROVISIONS AND DUE PROCESS

The Regulatory Code, Franchise Renewal Agreement and Customer Service Standards Ordinances provide for the following enforcement mechanisms. After eighteen (18) years of experience with the first franchises, the Agency and City Counselor’s Office agreed that a detailed and specific and clear-cut description of the steps and options involved in due process, and lists of the kinds of violations for which fines are levied, was the fairest method to ensure that the cable operator would likely abide by its agreement, and would know on the front end both the rules of the game and the consequences for breaking them. As a partner in an agreement, this kind of clear understanding and meeting of the minds is essential to a good regulatory relationship.

The Cable Operator is required to provide periodic reports demonstrating compliance with:

- Telephone Response Standards;
- FCC Technical Standards for the Performance of the Cable Systems;
- FCC Customer Service Standards for Repairs and Appointments;
- Franchise Fee Payment Calculations;
- Privacy Provisions; and,
- Complaint Resolutions.

The City's Franchising Authority (the Board of Aldermen) has found it very effective to delegate to this Franchise Agency the powers and duties for day-to-day administration of the franchise and to authorize an administrative adjudication procedure for resolving minor problems disputes, damage claims or subscriber complaints. This means that full-time professional municipal staff, well-versed in technicalities and the cable industry's history and realities, is able to handle the majority of issues which arise on an immediate basis with a minimum of hassle and delay. It has been our experience since 1984 that this provisions has allowed the Cable Operator a flexible vehicle by which the Cable Operator can make changes in its franchise which do not rise to the level of a formal modification, and which also serve the interests of the public in a win/win scenario.

If problems or potential violations cannot be resolved with this simple administrative adjudication, the franchise documents spell out in detail the due process procedures:

The Cable Operator is first given written notice of any alleged problems or infractions which provide an opportunity to: (1) provide evidence to the contrary; (2) dispute; or (3) cure an

alleged violation. Cure periods are often 30 days and could be longer depending on the nature of the problem.

The Franchise Agreement and Customer Service Standards Ordinances specify in detail the various fine amounts associated with different kinds of violations. Before a fine can be imposed, the City must either go to Municipal Court and prove a violation, or conduct a thorough full evidentiary Administrative Hearing process. The Cable Operator's rights are protected throughout. . Maximum fines in the City of St. Louis are \$500 per day for the cable operator or anyone else violating a municipal ordinance. With rare exceptions for liquidated damages specified in the franchise documents, some cable related fines are \$500, but many are only \$250. This even-handed treatment of the cable operator with respect to any other business, resident, person or entity is intentional, while recognizing that in some circumstances a lesser maximum fine is appropriate.

COMPETITIVE CABLE SYSTEMS

Overbuilders:

As previously referenced above, in granting the original 1984 franchises, it was the City's desire to award dual franchises serving the entire area. Furthermore, the public policy of non-exclusive franchises dates back to the City's Revised Charter of 1919, if not even earlier.

It was the 1984 cable TV applicants themselves which refused dual franchises covering the same territory.

In the late 1990's the Franchise Agency was informally approached by representatives of Wide Open West, which proposed overbuilding the entire City going head-to-head with

incumbent operator TCI. (WOW was also talking with other municipalities in the metropolitan area when representatives periodically flew into town to make the rounds.)

In a series of three or four cordial exploratory meetings over a few months, the Franchise Agency enthusiastically encouraged WOW to submit a formal proposal to the Franchise Authority, and provided as much information as possible as to the nature of an application (absent the 2002 Regulatory Code Ordinance directives containing detailed specifications for applications).

A major concern voiced by Franchise Agency personnel at the time was a noticeable lack of discretionary capital funds beyond those committed to other areas like Arizona. WOW representatives were optimistically positive that “funds would be available as needed,” but with little evidence from Wall Street to back such assertion. After a silent lapse of several more months, it became obvious that WOW would not be submitting a formal proposal to build the City of St. Louis. It is worth noting that WOW did bother to obtain a cable franchise in the smaller nearby City of St. Peters, Missouri, which it never actually acted upon, and chose to terminate after 6 months or more of no activity. Later WOW purchased existing Ameritech Cable Systems in Illinois and elsewhere from SBC, an obvious change in its business plan and strategy which had nothing to do with the franchise process, but likely a great deal to do with spending the same amount of capital for systems already generating revenue.

Other than the brief brush with WOW, the City has never been approached by a potential over-builder.

Telecommunications Company’s:

The Franchise Agency has never been approached informally or formally by any telephone company, including the carrier –of –last – resort, SBC/Southwestern Bell for the

purpose of discussing a cable franchise. While there may be casual exchanges with senior elected officials or their staff, nothing on the record suggests even an informal start of serious franchise inquiries or discussions.

FRANCHISE AGENCY CONCLUSIONS

1. Local franchising works.

The past and current experience of our Board of Aldermen, past and present Cable Operators, PEG Access entities, citizen video producers, subscribers, public), emergency responders, Fire Department, Police Computer Specialists, and other stakeholders, leads this Franchise Agency to firmly assert that the local cable franchising process has functioned beneficially and well in St. Louis since the early 1980s.

The franchise process has enabled the City to rid itself of a non-performing early cable franchisee, facilitate the initial construction of two cable systems totaling over 680 miles and the upgrade of those systems some twenty years later - with a minimum of disruption to residents or businesses.

The franchise process has allowed our City's various stakeholders, to have a voice in what kind of wire-line based features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to best meet their local needs for the City of St. Louis to communicate with its citizens and for those citizens to communicate with each other in manners which are cost-effective, technologically appropriate and content-oriented in the rapidly expanding millennium of information exchange.

2. Citizens expect a prompt response to cable problems which Local Government is best able to accomplish.

It allows the Franchise Agency to resolve citizen complaints quickly and appropriately. A citizen who has taken off work to meet the cable service technician, only to find that the Cable Operator missed the appointment between 8 AM and Noon is not interested in making a long-distance call to someone agency outside his local community and hoping that someone will attack his problem a few hours, days, weeks or months from now. The same is true when a non-subscriber suddenly finds his yard torn up with an improper and illegal encroachment during a construction phase, or when a Trash Truck Driver reports that a cable wire is so low he cannot lift the dumpster or get the trash truck down the alley. We hear that “the City granted this company the right to do business, now I expect the City to make them treat me right.” Indeed this is one of the many functions of local government. There is no need to create a new bureaucracy to handle complaints of specifically local and practical nature because of unproven and theoretical potential problems with so called barriers to entry.

3. Our Local franchise administrators are experienced professionals with long-term in-depth deep knowledge of local franchise-related issues and history.

As the above information indicates, Franchise Agency personnel, and members of the Board of Aldermen’s Public Utility Committee, as well as the Street Department, Board of Public Service and City Counselor’s office are experienced at working with cable operators to both see that the needs of the local community are met *and to ensure that the practical business needs of cable providers are taken into account.* This has been our policy and practice since the

Agency was created in 1983, through four transfers of ownership and a major renewal and we take this mission seriously.

It is ironic that the institutional memory of this franchise rests in the Franchise Agency. The Cable Operator (Charter) calls us when it needs copies of PROW permits, or records, or systems maps, or to know why cable plant was built a particular way in a particular place. The employee turnover at Charter has been breath-taking. The Franchise Agency's Regulatory Manager and the Administrative Manager have been here 18 years. The Senior Inspector came to us in 1996 after 10 years employment with TCI in this system. The Junior Inspector has been here almost as long, having been employed in both the cable and satellite industries in St. Louis. The recently retired Commissioner was here 13 years, and the new Commissioner was hired as Video Manager over 6 years ago. The Agency's Subscriber Complaint Liaison has been here since before the 1984 franchises were granted.

We note this irony goes beyond the City of St. Louis. Many of our fellow franchisors in this metropolitan area have equally long careers and professional expertise in cable matters. We have met over the past two decades to discuss areas of common concern, cooperated and shared knowledge when faced with those first 1993 rate filings, sympathized with each other over sub-par performance by departing operators, and exchanged ideas, documents and approaches for sensible cable regulation.

4. Elected Officials have very real legal fiduciary obligations regarding public property.

It is important for the Commission to understand that the elected officials of St. Louis have a fiduciary obligation to ensure the highest and best use of public property, which they hold

in trust for their taxpayers. By law, they are not allowed to give away the streets without appropriate compensation, anymore than they could responsibly allow a commercial hamburger joint to use land in a city park for free, or allow a fine new restaurant to build on the riverfront without ever paying rent or meeting health and building codes, just so there would be more choice for tourists.

5. Local franchises are not an appropriate vehicle for changes in public telecommunications policy. They are property rights contracts with associated obligations.

Local franchises are not used to establish broad national policies, or change the regulatory climate. They are first and foremost property-related contracts, in which two parties voluntarily enter into a mutual agreement long-term agreement for one entity to make its property available and the other entity to pay for its use. That compensation include a mix of cash and public benefits/protections

They provides a means for local government to appropriately oversee the operations of cable service providers using that government's public property in the public interest, and to ensure compliance with applicable laws, just as it would do for any other business within the City's boundaries.

Local cable franchising has ensured that *local* cable systems are allowed access to the *local* rights of way in a fair and evenhanded manner, that other *local* users of our *local* rights-of-way are not unduly inconvenienced, and that *local* uses of the rights-of-way, including *local* maintenance of streets, and upgrade of privately-owned *local* facilities and systems in those

publicly-owned streets, are undertaken in a manner which is in accordance with *local* requirements.

Local cable franchising have allowed our City to merely ensure that our *local* community's specific (and affordable) cable-related needs were met and that the *local* customers who are our citizens are responded to and protected in the timely fashion which they expect from *local* government.

6. No level of government - federal, state or local - should establish subsidies, exemptions, preferences, advantages or disadvantages for competing providers of the same services.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. *The St. Louis Franchise Agency has provided factual evidence that the franchising process has worked effectively in the city of St. Louis without the need for a redundant “third tier” of federal regulation.* . Any new entrant would have the same experience, and does not need subsidies in the form of federal preemptions or exemptions.

There is no need to create a new bureaucracy to respond to issues, subscriber complaints, pothole repairs, electrical code violations, stuck trash trucks, excavation permits, quantity of needed PEG channels, cable in classrooms, and other matters of purely local interest to the various citizens of this community.

The factors, needs, considerations and reasons discussed herein are equally applicable to any potential new entrants as to existing providers.

We wish to emphasize to the Commission that the use of the public rights of way are valuable local resources given by the local residents and entrusted to their local officials.

Breaking that trust with the local citizens under the guise of promoting speedy entrants of competitive providers is misplaced. The franchise process has worked well for the Cable Industry and has provided robust offering of cable television service, high speed internet access and the emerging VoIP services. If the franchise process was such a stifling process, cable would not have evolved to what it is today. It will work for new entrants by promoting level playing fields which ensure that a new entrant will not put an old entrant out of business

7. Franchising is not a barrier. Economic monopoly is a much more salient factor in the lack of competitive deployment.

The promise of the 1996 Cable Act was that citizens would see many more competitive entrants in the market place. This has not occurred in St. Louis. It is not the result of a franchise “problem”, but rather, due to the realities of return on capital investment to build second systems competing for the same fixed customer base. This tendency towards ‘economic monopoly’ is not unique to multi-channel video. There is not competition in St. Louis or Missouri for gas, electric, water or sewer services at all. Except for the cable operator, there would be no real landline competition in telephony. (13 non-incumbent telecommunications entrants in St. Louis focused on high-volume business customers or backbone long-haul networks, not residential customers.) New video entrants must prove the franchise process actually has a stifling effect. This they have not done, and cannot do until they at least try the process. We echo the sentiments of other local franchising authorities that all a new entrant has to do is agree to be bound by the same terms and conditions as any other initial franchise agreement. Yet, this quick and easy way to enter the

local marketplace is soundly rejected because some new entrants want special advantages and dispensations.

8. Regulatory certainty promotes stability and deployment.

If the rules are the rules, then potential players can expend energy getting into the market, instead of trying to figure out ways to game the rules. As will no doubt be echoed by other Local Government Commenter's, we embrace the concept that a certain amount of certainty in the regulatory climate (as is clearly the case after the many judicial proceedings following the 1984, 1992 and 1996 Acts) is of benefit to the most stakeholders, even when a few of the newer stakeholders might be disappointed that its path to deploy competitive products is not smoothed as much as it might like.

IN SUMMARY,

We, therefore, respectfully suggest that:

- A) the Commission needs do nothing; and
- B) request that the Commission in fact do nothing because local officials know what local people need .

Interfering with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing and well-established Federal (and judicial) law with regard to either existing cable service providers, Open Video Systems, or other new entrants to the video market is not warranted at this time.

Respectfully submitted,



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